IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2007

Coram

The Honourable Mr.Justice V. DHANAPALAN

W.P.No.22115 of 2006 & M.P.Nos. 2,3 & 4 of 2007

Cooperative Nagar Residents
Welfare Association
represented by its President
A. Selvaraj
Thandalai Panchayat
Ammaiyappam Post
Tiruvarur,Tiruvarur District ... Petitioner

Vs.

1 The Director of Town & Country Planning
Anna Salai
Chennai - 600 002

2 The Block Development Officer (Village Panchayat)
and Commissioner / Local Planning Authority
Tiruvarur Panchayat Union
Tiruvarur
Tiruvarur District

3 The President
Thandalai Panchayat
Tiruvarur
Tiruvarur District

4 The Special Officer
Tiruvarur Cooperative Housing Society
South Main Street
Tiruvarur

5 A.S. Rabiyathu Faziriya Respondents

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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records on the file of the first respondent in his proceedings Na.Ka.No.4172/2006-GR dated 26.04.2006 and the proceedings of the second respondent in Na.Ka.No.3701/05/R3 dated 03.02.2006 and quash the same.

For petitioner Mr. K. Sridhar

For RR 1 to 4 Mr. A. Edwin Prabakar
Government Advocate

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For 5th respondent Mr.R.Muthukumarasamy, Sr. Counsel
for Mr. A. Jenasenan

ORDER

The petitioner, a Residents Welfare Association, has filed this writ petition seeking a writ of certiorari calling for the records on the file of the first respondent in his proceedings in Na.Ka.No.4172/2006-GR dated 26.04.2006 and also the proceedings of the second respondent in Na.Ka.No.3701/05/R3 dated 03.02.2006 and quash the same.

2. The petitioner's case in short, as culled out from its affidavit, is as under:

2.1 The first respondent, vide his proceedings dated 04.08.1997, granted permission to the second respondent to form a layout at Thandalam Village, Tiruvarur District.

2.2 Under clause 16 of the said proceedings, the second respondent was required to set apart open space in the layout for the purpose of park, children's playground, library, community hall and school and hand over the same to the local administration by way of a gift deed.

2.3 Based on this permission from the first respondent, the fourth respondent formed a layout in the name and style of "Cooperative Nagar Housing Society" consisting of 318 housing plots, besides allotting open space as required under clause 16 of the first respondent's proceedings dated 04.08.1997.

2.4 Pursuant to the fourth respondent's advertisement, the members of the petitioner association purchased housing plots considering the fact that the layout had been approved by the first respondent with necessary provision for park, community hall, etc.

2.5 That being so, the fourth respondent, by way of newspaper advertisement dated 13.10.2002, called for tenders for the purchase of plots measuring 14,168 sq. ft. and 15,360 sq. ft. meant for community hall and children's school respectively.

2.6 In response, the petitioner, by its letter dated 16.10.2002, requested the third and fourth respondents not to sell the plot allotted for the

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purpose of community hall. Yet, the fourth respondent, by its letter dated 16.10.2002 addressed to the petitioner, stated that the subject plot was sold to the fifth respondent, an individual, only for the purpose of construction of community hall and as such, his action was not illegal.

2.7 Aggrieved by this reply of the fourth respondent, the petitioner, by a representation dated 19.08.2005, requested the third respondent not to sanction the building plan for the construction of kalyana mandapam by the fifth respondent in the plot allotted for construction of community hall.

2.8 Putting the petitioner's effort in vain, the second respondent, by his proceedings dated 03.02.2006, advised the third respondent to accord sanction to the fifth respondent for the construction of kalyana mandapam, subject to certain conditions.

2.9 In challenge to the second respondent's proceedings dated 03.02.2006, an appeal was preferred by the petitioner before the first respondent and the appeal was dismissed confirming the order of the second respondent.

2.10 As against these orders of the first and second respondents, the present writ petition.

3. The first respondent, in reply, has filed counter contending that:

a. the technical approval for a layout of about 29.87 acres was given with certain reservations such as that 10.10% of non-saleable open space allotted for parks should be handed over to the local body and that 1.09%, 1.18% and 1.08% of open space was allotted for the purposes of shops, primary school and community hall respectively which are sites saleable by the layout promoter;

b. the area meant for community hall and school are saleable by the layout promoter only for the purposes for which they were allotted and they need not be handed over to the local bodies, as contended by the petitioner and various aspects such as this were given due consideration by the first respondent before passing of the impugned order and as such, his order is not liable to be set aside;

c. None of the terms and conditions of the layout and Panchayat Building Rules has been violated and the layout is treated as a mixed residential area with plots allotted for schools, community hall and commercial complexes and the Panchayat Union has given approval for kalyana mandapam which

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can be used for community purposes as well;

d. the fourth respondent has got prior approval dated 24.07.1999 from the Registrar of Cooperative Societies (Housing), Chennai 20 for inviting tenders;

e. out of the area of 1,34,460 sq. ft. allotted for park, an extent of only 1,09,892 sq. ft. was handed over to the local body by the promoter society, leaving a balance of 21,568 sq. ft. which was directed to be handed over to the local body and it has nothing to do with the saleable area allotted for community hall which was sold to a member of the society by following the due procedure;

f. Clause 16 has not at all been violated inasmuch as community hall does not find place in the list of public purpose areas earmarked for handing over to the local body and community hall earmarked in the approved lay out is not for common enjoyment of the inhabitants and it is a saleable site by the layout promoters;

g. the second respondent has not violated the layout condition granted by the first respondent; and

h. the order dated 26.04.2006 holding that the area over and above 10.10% allotted for shops, community hall, kindergarten school, health centres, etc. is saleable and confirming the order of the second respondent dated 03.02.2006 is only as per the rules in existence and as such, does not call for any interference by this Court.

4. The fourth respondent who is the Special Officer of the Tiruvarur Cooperative Housing Society has contended that:

a. as per the proper permission obtained from the Registrar of Cooperative Societies (Housing) vide his proceedings dated 25.01.1995 and 03.06.1996, the lay out was formed and allotment was made to the members of the petitioner association and possession also handed over to them;

b. the land meant for formation of road and park had been handed over to the Village Panchayat by way of a gift deed and since no community hall was constructed in the plot allotted for it, a tender was issued for sale of the said plot and the fifth respondent who was the highest bidder in the auction was handed over possession of the plot and she had also started construction in the said plot;

c. after confirmation of auction in favour of the fifth respondent, necessary mutation of records was made in the office of the Registrar of Co-operative Housing Societies and that apart, patta was also transferred in the name of the fifth respondent in the Revenue Department and the fifth

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respondent was also put in absolute enjoyment and peaceful possession of the property in question;

d. the fifth respondent, after the auction was confirmed in her favour, obtained planning permission from the competent authority for putting up construction and accordingly, planning permission was granted to her;

e. the petitioner has no locus standi to file this writ petition questioning the sanction granted by the Registrar of Cooperative Societies (Housing), Chennai and the planning permission issued by the competent authority and the matter is purely between the fifth respondent and the Cooperative Department.

f. the sale process through auction was over in 2002 itself whereas this petition has been filed only in 2006 and if at all the petitioner were having a good intention that the said plot should be used only for construction of a community hall, it should have taken earnest steps in the very beginning stage itself and cannot challenge the action of the respondents at this stage by filing a writ petition; and

g. there is no whisper in clause 16 of the proceedings of the first respondent about allotting open space for construction of a community hall and handing over of the same to the local authority by way of a gift deed, as contended by the petitioner and provision was made only in respect of park, kindergarten school, library, etc.;

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5. For her part, the fifth respondent has filed counter contending that:

a. in clause 16 of the proceedings of the first respondent dated 04.08.1997 sanctioning to form a layout, open space allotted for construction of community hall was not at all directed to be handed over to the local administration by way of gift deed, though an extent of 14,168 sq. ft. has been allotted for construction of community hall and it was only the open space allotted for park, children's playground, fire service, police station, library, post office and roads which was directed to be handed over to the Municipality.

b. the Deputy Registrar, Housing Development, Thanjavur, in his letter dated 06.07.1999, had recommended to the Registrar of Cooperative Societies (Housing), Chennai for permission to sell six shop portions measuring an extent of 12,643 sq. ft. and to sell by public auction extents of 14,168 sq. ft. and 15,360 sq. ft. allotted for community hall and children's school respectively and accordingly, the Registrar of Cooperative Societies (Housing), Chennai, vide his proceedings dated 24.07.1999, had permitted the fourth respondent to sell these areas at the rate of not less than Rs.25/- sq. ft. by calling for sealed tenders with the condition that the plot should be used only for the purpose for which the open land is sold.

c. pursuant to the sanction granted by the Registrar of Cooperative Societies (Housing,) the fourth respondent advertised by way of tender auction sale notice in Dinamalar on 26.09.2002 and once again on 13.10.2002 and she was the highest bidder in the said tender auction sale and on payment of necessary sale price, the sale deed came to be executed in her favour in which it was specifically stated that the open space should be used only for constructing community hall and she also obtained "No Objection Certificate" from the Fire Service Department and patta dated 11.11.2005 from the Tahsildar, Tiruvarur District;

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d. the second respondent, vide his proceedings dated 03.02.2006, had categorically communicated to the third respondent that the community hall can be built without intervention or nuisance to other occupants of the plots and also without causing pollution and with proper sewerage facilities and high-raised compound wall;

e. the first respondent has rightly observed in his proceedings that only 10% of the total extent of the land will have to be reserved for open space and to be handed over to the local administration and the open space beyond 10% of the area can be sold subject to the condition that it should be used only for the purpose for which it is apportioned and as such, there is no impugnity in the proceedings of the first respondent in and by which the petitioner's appeal has been turned down;

f. pursuant to the order of the first respondent dated 26.04.2006, she had obtained the plan duly approved by the third respondent for the purpose of construction of kalyana mandapam vide proceedings dated 22.05.2006 and had spent a huge sum of money for the construction of the kalyana mandapam which will be certainly of some use to 318 families in the Cooperative Nagar and it can also be used for conducting functions as well as public meetings; and

g. the permission granted for construction of kalyana mandapam in the open space reserved for construction of community hall is neither illegal nor unlawful as it has been granted by the competent authority only after compliance of formalities as required by the first respondent as well as the third respondent.

6. The petitioner has filed its reply affidavit contending that:

a. the proceedings dated 04.08.1997 of the first respondent according permission to form the layout clearly demarcates the place for samudaya koodam as a public allocation meant for the common use of the 318 allottees in the layout and the layout is a self-contained unit in which provision has been made for several public utilities like park, school, community hall, public utility places like fire service station, police station, library, post office, etc. besides public roads in it and this entire area constitutes the public utility area meant for the common use of the residents and this cannot be sold away to anybody and cannot be put to any other use by private individuals;

b. the first respondent has failed from his statutory

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duty of ensuring that the sanctioned plan is implemented in full and has thus, violated the provisions of law and the conditions attached to the layout and the fourth respondent has not handed over the vacant space by way of gift deed to the village panchayat which can be seen from the submission of the panchayat itself that an area of 64,041 sq. ft. of common utility land including samudaya koodam as provided in the layout has not been handed over by the fourth respondent to the panchayat for maintenance.

c. the allotment order given to its members indicates not only the price of plots @ Rs.15/- per sq. ft. but also the price for the development charges for the common utilities including specifically the community hall (samudaya koodam) @ Rs.10.50 per sq. ft. and after receiving Rs.36,000/- per plot of one ground and Rs.25,200/- towards development charges for utilities including road, park, school and samudaya koodam, it is not open to the fourth respondent to sell away the community hall portion to the fifth respondent;

d. the community hall is set apart for common use of the residents of the layout and it is not meant for use by outsiders and the first respondent had specifically asked the said space to be handed over to the panchayat for putting up of community hall and the third respondent has also passed a resolution on 15.02.2006 seeking clarification and guidance from the District Collector on the sale of the community hall to the fifth respondent;

e. Clause 16 clearly of the layout conditions of the first respondent indicates that common public utilities like park, children's playground, library and community hall should be handed over to the local administration by way of gift deed and the details of the layout sanction are indicated in the schedule which clearly states 14,168 sq. ft. or 1.08% of the total extent towards community hall for the usage of the allottees occupying 318 house plots;

f. when the sale of the space allotted for samudaya koodam itself is illegal, all subsequent actions including mutation of records in the office of the Registrar of Cooperative Societies and in the Revenue Department are also liable to be set aside as illegal and the mutation of records does not create any right in favour of the respondents;

g. it has been protesting against the sale of the said plot to the fifth respondent right from the date the fourth respondent had called for sealed tenders and the numerous correspondence and proceedings before the respondents 1 to 3 would prove that it has been agitating against the said sale right from the beginning;

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h. the fourth respondent, having obtained approval of the layout based on the condition that the said space shall be earmarked for community hall purpose for the use of the residents of the layout, cannot turn back and say that he is entitled to sell the said land to third parties in violation of rules and that nobody can question him;

i. its members who have put up houses in their plots deserve and are entitled to privacy and noise-free life and they are deprived of this by the impugned orders passed by the respondents 1 and 2;

j. there is no 10% embargo on open space in the layout sanction order and when the first respondent has granted a layout where public utilities are clearly indicated which includes 14,168 sq. ft. of land earmarked for community hall for the use of the residents, this land cannot be sold to third parties for commercial exploitation like kalyana mandapam which definitely will disturb the tranquility in the area;

k. knowing fully well that the petitioner has submitted its objections and has vehemently proceeded through various legal forums and would also further pursue its remedies, the respondents 1 to 4 have taken a calculated risk in allowing the fifth respondent to start the construction in haste; and

l. the fifth respondent cannot claim equity after commencing construction in violation of the sanctioned plan and in any event, the building is only in the foundation level and the fifth respondent deliberated continued construction for more than 7 days even after the order of injunction passed by this Court and only after a police complaint was given, the construction was stopped.

7. Heard Mr. K. Sridhar, learned counsel for the petitioner, Mr. A. Edwin Prabakar, learned Additional Government Pleader for respondents 1 to 4 and Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the fifth respondent.

8. The first and foremost contention put forward by the learned counsel for the petitioner is that the impugned order of the first respondent is unconstitutional as it is violative of Article 300-A of the Constitution of India and against the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and more particularly, Clause 16 of the layout conditions contained in the proceedings of the first respondent according permission to form the layout. His second contention is that when the housing scheme is granted to a cooperative housing society purely for residential purpose, the fourth respondent ought not to have allowed the fifth respondent to go ahead with the construction of a kalyana mandapam which would only result in noise pollution and be

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a perennial nuisance to the peaceful life of the inmates of the area.

9. The learned counsel for the petitioner has further contended that the fourth respondent cannot sell the lands in the layout without getting the sanction of the General Body of the Cooperative Housing Society and that too, in violation of the Society's rules and by-laws. He has argued that the first respondent has erroneously passed the order dated 26.04.2006 stating that only 10.10% of the land is earmarked for park and children's playground and the land over and above 10% set apart for shops, community hall and children's school can be sold to third parties for the said purpose which is in violation of his own planning permission dated 04.08.1997. It is further contended by the learned counsel for the petitioner that the first respondent, having held that the fourth respondent had failed to handover an area of 21,568 sq. ft. to the local administration, ought to have rejected the permission for construction of kalyana mandapam.

10. It is also the contention of the learned counsel for the petitioner that when the land vests with the first respondent, he has erred in holding that the fifth respondent has got title to the subject land and had also failed to see that the fourth respondent does not have power to convey or sell the land to the fifth respondent and thus, the sale effected in favour of the fifth respondent is null and void.

11. The learned counsel for the petitioner, in support of his contention that there should be a community hall for every 1,000 persons, has taken me through Rule 18(4)(b) of the Tamil Nadu Panchayats Building Rules, 1997 which reads as under:

> "For every 1,000 persons, there shall be a common children playground, a primary school, a community hall, a library and a recreation centre."

12. Per contra, the learned Additional Government Pleader has contended that only the open space of 10.10% allotted for parks handed over to the Municipality is not saleable and the open space allotted for shops, primary school and community hall is saleable and as such, the impugned order of the first respondent in confirming the order of the second respondent is perfectly in order. Attacking the contention made by the learned counsel for the petitioner, he has pointed out that community hall does not at all find place in clause 16 of the first respondent's proceedings according permission to form the layout and as such, the second respondent has not violated the layout condition imposed by the first respondent.

13. The learned Additional Government Pleader has strenuously contended that only after getting approval from the Registrar of Cooperative Societies (Housing), Chennai, to call for sealed

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tenders in respect of sale of open space allotted to children's playground and community hall, tenders were called for in which the fifth respondent was the highest bidder and accordingly, the possession of the said area was handed over to her and even revenue records were mutated in the office of the Registrar of Cooperative Societies (Housing) and patta also was issued to the fifth respondent and as such, there is no illegality in the sale effected to the fifth respondent.

14. Similarly, the learned Senior Counsel appearing for the fifth respondent, has contended that there is no whisper in clause 16 of the layout conditions contained in the proceedings issued by the first respondent and as such, the contention of the petitioner that the open space earmarked for community hall has not been handed over to the local administration does not have legs to stand.

15. It is also the contention of the learned Senior Counsel that inasmuch as the fifth respondent was declared the highest bidder in the auction conducted and even possession of the plot handed over to her and moreover, when she had also obtained patta from the Tahsildar, Tiruvarur District and No Objection Certificate from the Deputy Director, Fire Service Department in addition to prior approval for construction of a kalyana mandapam which can also be used for conducting public functions, the impugned order of the first respondent, upholding the order of the second respondent granting permission to construct a kalyana mandapam has to be confirmed and the writ petition has to be dismissed.

16. To decide the case on hand, it would be useful to refer to Rule 18 of the Tamil Nadu Panchyayats Rules which reads as under:

"Rule 18

Common amenities

In every layout which has a provision for more than 10 houses, the following minimum standard of amenities shall be provided:-

1 an open space for common public use as park, playground or recreation ground to an extent not less than 10 per cent of the total area of the layout

2 Such open spaces and common amenities shall be so distributed in order that one such open space shall be available for every group of 25 houses.

3 There shall be provided one or more

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public wells, public baths and latrines in every layout to the satisfaction of the executive authority.

4 Facilities such as shopping, recreation centre, community hall and library shall be provided in accordance with the size of the development and based on the following standards:-

a For every 100 persons, there shall be at least one shop; and

b for every 1,000 persons, there shall be a common children playground, a primary school, a community hall, a library and a recreation centre."

17. Further, it would also be useful to refer to Section 113 and 113-A of the Tamil Nadu Town and Country Planning Act, 1971 which run as under:

Section 113

Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made thereunder.

18. From a perusal of the entire records, it is seen that the first respondent, in his proceedings dated 04.08.1997, granted permission to the second respondent to form a layout at Thandalam Village, Tiruvarur District. As per clause 16 of the said proceedings which is roughly translated as under

"The plots allotted for park, children's playground, library, thiravidam, etc. should be sub-divided in the office of the Tahsildar and should be handed over as gift to the local administration."

the second respondent was required to set apart open space in the layout for the purpose of park, children's playground, library, and school and hand over the same to the local administration by way of gift deed. Accordingly, a layout was formed in the name and style of "Cooperative Nagar Housing Society" consisting of 318 plots besides allotting open space as required under clause 16 of the proceedings dated 04.08.1997. Pursuant to the fourth respondent's

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advertisement, the members of the petitioner association purchased housing plots considering the fact that the layout was approved by the first respondent with necessary provision for park, playground, library, community hall, school, etc. While that being the position, there was an advertisement in the newspaper by the fourth respondent on 13.10.2002 calling for tenders for the purchase of plots measuring 14,168 sq. ft. and 15,360 sq. ft. meant for construction of community hall and school respectively. On seeing the same, the petitioner, in its letter dated 16.10.2002, requested the respondents 3 and 4 not to sell the plot allotted for the purpose of community hall. However, the petitioner received a letter dated 16.10.2002 from the fourth respondent stating that the subject plot was sold to the fifth respondent, an individual, for the purpose of construction of a community hall. Aggrieved by this reply of the fourth respondent, the petitioner sent a representation on 19.08.2005 requesting the third respondent not to sanction building plan for the construction of kalyana mandapam by the fifth respondent in the plot sold to her for construction of community hall. However, on 03.02.2006, the second respondent advised the third respondent to accord sanction to the fifth respondent for the construction of kalyana mandapam subject to certain conditions against which an appeal was preferred by the petitioner before the first respondent and the same was dismissed confirming the order of the second respondent and these orders of the respondents 1 and 2 are impugned in this writ petition.

19. On a perusal of the counter of the first respondent, it is seen that the technical approval for a layout of about 29.87 acres was given by the first respondent with certain conditions such as that 10.10% of non-saleable open space allotted for parks should be handed over to the local body and that 1.09%, 1.18% and 1.08% of open space should be allotted for the purpose of shops, primary school and community hall respectively. According to the first respondent, the area meant for the community hall and school are saleable by the layout promoter only for the purposes for which they were allotted and they need not be handed over to the local body and none of the terms and conditions of the layout and Panchayat Building Rules has been violated and the layout is treated as a mixed residential area with plots allotted for schools, community halls and commercial complexes and the Panchayat Union has given approval for kalyana mandapam which can be used for community purposes as well. There was a prior approval on 24.07.1999 by the Registrar of Cooperative Societies (Housing) to the fourth respondent for inviting tenders. Out of the area of 1,34,460 sq. ft. allotted for park, an extent of only 1,09,892 sq. ft. was handed over to the local body by the promoter society, leaving a balance of 21,568 sq. ft. which was directed to be handed over to the local body and accordingly, it has nothing to do with the saleable area allotted for community hall which was sold to the fifth respondent by following due procedure. It is the stand of the first respondent that clause 16 of the proceedings dated 04.08.1997 has not at all been violated inasmuch as community hall

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does not find place in the list of public purpose areas earmarked for handing over to the local body and community hall earmarked in the approved layout is not for common enjoyment of the inhabitants and it is a saleable site by the layout promoters and as such, the second respondent has not violated the layout conditions of the first respondent. Accordingly, it is possible that the area over and above 10.10% allotted for shops, community hall, kindergarten school, health centres, etc. is saleable and therefore, as per the rules, the authorities concerned have acted accordingly.

20. According to the fourth respondent, as per the proper permission obtained from the Registrar of Cooperative Societies (Housing) vide his proceedings dated 25.01.1995 and 03.06.1996, the layout was formed and allotment was made to the members of the petitioner association and possession also was handed over to them. Necessary mutation of records was made in the office of the Registrar of Cooperative Societies (Housing) and patta was also transferred in the name of the fifth respondent in the Revenue Department who, after the auction was over, obtained patta and put up construction. If at all the petitioner were having a good intention that the said plot should be used only for construction of a community hall, it should have taken earnest steps in the very beginning stage itself.

21. The fifth respondent also has confirmed that as per clause 16 of the proceedings of the first respondent dated 04.08.1997, open space allotted for construction of community hall was not at all directed to be handed over to the local administration by way of gift deed though an extent of 14,168 sq. ft. has been allotted for construction of community hall and it was only the open space allotted for park, children's playground, fire service, police station, library, post office and roads which was directed to be handed over to the Municipality. She has further confirmed that the Deputy Registrar, Housing Development had recommended to the Registrar of Cooperatives Societies (Housing), Chennai for permission to sell six shop portions measuring an extent of 12,643 sq. ft. and to sell by public auction extents of 14,168 sq. ft. and 15,360 sq. ft. allotted for community hall and children's school respectively and accordingly, the Registrar of Cooperative Societies (Housing), Chennai, as per the tender procedure has called for tenders and the fifth respondent participated in the tender proceedings and the land in question was allotted to her and thereafter, she had started construction in the said plot. It is her strong case that the second respondent, in his proceedings dated 03.02.2006, had categorically communicated to the third respondent that the community hall can be built without intervention or nuisance to other occupants of the plots and also without causing pollution with proper sewerage facilities and high-raised compound wall.

22. A reply affidavit has been filed by the petitioner questioning the submissions made by the respective respondents

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about the open space allotment for public utility and that the first respondent has failed from his statutory duty to ensure that the sanctioned plan is implemented in full and has thus violated the provisions of law and the conditions attached to the layout. It is also his case that the land in question which is allotted for community hall cannot be sold to third parties for commercial exploitation like building of kalyana mandapam and the respondents 1 to 4 have taken a calculated risk in allowing the fifth respondent to start the construction in haste and the action of the respondents 1 to 4 in selling the plot in question to the fifth respondent is not only violative of Article 300A of the Constitution of India but also against the provisions of the Tamil Nadu Town and Country Planning Act, 1971. His one more contention is that the fifth respondent has no manner of title to the land in question and it is only with the first respondent.

23. Admittedly, an area of 14,168 sq. ft. was earmarked in the layout for community hall. Whoever is the buyer of the site reserved for community hall as provided for in the layout, has to use it only for the purpose for which it stands earmarked. The land meant for formation of road and park had been handed over to the village panchayat by way of gift deed and since no community hall was constructed in the plot allotted for it, the authorities, after proper permission from the Registrar of Cooperative Societies (Housing) have decided to go for sale of the said plot. Accordingly, a tender was called for after following the due procedure and the fifth respondent, who was the highest bidder in the auction, was handed over the possession of the plot as early as in the year 2002 after the auction was confirmed in her favour. Also necessary mutation of records was made in the office of the Registar of Cooperative Societies (Housing) and patta was also transferred in the name of the fifth respondent by the Revenue Department and the fifth respondent also was also put to absolute possession and peaceful enjoyment of the property in question. She also applied for planning permission from the competent authority for putting up construction and accordingly, the authorities have granted planning permission.

24. Further, except a representation, the petitioner has not at all taken efforts, much less any serious efforts, to question the process of sale of land, either at the stage of tender or at the stage of grant of planning permission from the Registrar of Cooperative Societies (Housing) or at the stage of mutation of records by the Revenue Department or at least at the stage of grant of planning permission. Having remained silent for several years and during several stages, all of a sudden, the petitioner had woken up and filed the present writ petition.

25. At this juncture,it is to be stated that clause 4 of the layout conditions stipulates that plot allotted for that purpose can be used only for that purpose and it cannot be used for any other purpose. It is further provided in clause 18 of the layout

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conditions that:

(i) the plot owners have to enter an agreement with the executive authority to the effect that they would abide by the stipulated terms and conditions.

(ii) plots should be sold or given on lease only subject to the stipulated terms and conditions

(iii) layout conditions should be registered with the office of the Registrar of Cooperative Societies (Housing)

(iv) the stipulated terms and conditions should be incorporated in the sale agreements so as to have a binding effect on the seller as well as the buyer of the plots.

26. As far as the community hall is concerned, it is vested with the Registrar of Cooperative Societies (Housing) under whose control the area specified for the community hall has been given and six shops, one children's school and one community hall have been permitted for construction by the authorities concerned vide proceedings dated 06.10.2002 and accordingly, the sale was conducted by following the due procedure. Therefore, when it is not in dispute that the plot in question was allotted for the purpose of community hall, the petitioner cannot question the same when it is used for the purpose of constructing a kalyana mandapam which is also permissible as per the proposition settled by this Court on 21.04.2006 while deciding a similar case in in W.P. Nos.5106 and 1282 of 1996. The relevant portion of the said order runs thus:

"6. In W.P.No.13391/2002 (case law brought to the notice of this court by the learned counsel for the Housing Board), a large area in a development scheme was earmarked for a school. That area was included under the saleable category. The land remained vacant, despite steps taken by the Housing Board to sell it. In order to mitigate any further loss on account of the land remaining unsold, a portion of that larger extent of land was carved out and re-classified as residential plots. The principle that the authority had a right to convert the usage of land for a purpose other than the one for which it was originally earmarked, if that land is included in the category of saleable lands, was accepted by a learned Judge of this court in the above referred to writ petition. In the judgment of the Hon'ble Supreme Court of India brought to the notice of this court by the learned counsel for the petitioners/petitioner, an open area reserved for a public park under the Act was sold to a trust to build

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a hospital. That was challenged by the residents of that area before the Karnataka High Court. A learned Single Judge of that court dismissed that writ petition while the Appellate Bench of that court, allowed that writ petition. Therefore, the proposed buyer went before the Hon'ble Supreme Court of India. The Supreme Court was considering the provisions of City of Bangalore Improvement Act, 1945 repealed by Bangalore Development Authority Act, 1976 with subsequent amendments as they stood at that time. Reservation of the open space in that case as a park was under the 1945 Act and section 76 of the Repealing Act saved all such reservations. From a perusal of the said judgment, it is seen that section 16 of the Act mandatorily provides for reservation of an area for public parks, etc., The law as it originally stood and as it stood amended, created an absolute bar in selling or otherwise disposing any area reserved for public parks. Only in that context, the Hon'ble Supreme Court of India upheld the order of the Division Bench of the Karnataka High Court holding that the Act complained of was a result of abuse of power. At the risk of repetition, this court wants to note that there is a Statutory bar in that case for selling the space earmarked for parks, etc., from being dealt with in any manner contrary to the original purpose. The Hon'ble Supreme Court of India was dealing with a case in which a space was reserved for park and which was decided to be sold to a trust for the purpose of constructing a hospital. In the case on hand, from the abstract of the scheme, I have already noted that the space reserved for "Community Centre" is included in "saleable lands" and therefore, with respect, I state that on the facts available in the judgment decided by the Supreme Court, it may not be possible to hold that it gets attracted to the case on hand. The Hon'ble Supreme Court of India had been repeatedly cautioning that before deciding to follow a case law, the facts and circumstances on which the case was decided must be borne in mind by all courts. In the other reported judgment of this court brought to my notice by the learned counsel appearing for the petitioners, this court was dealing with conversion of a park earmarked in the original lay-out into one of a private land to enable the owner/promoter to construct a community hall. Learned Judge of this court, who was dealing with that case, held as hereunder:

> "The disputed property has been shown as a park in the lay-out plan; it may be open to the authority to convert the use of the land for any other public purpose other than the purpose

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for which the land was earmarked namely, a park can be converted into a place for hospital, school or kalyana mandapam, etc., for a common use; the purpose should continue to remain only as public and for the benefit of the entire colony; but in that case the attempt is to convert the property as belonging to the 4th respondent herself (owner), which is definitely not permissible and the very lay-out, sanctioned and granted was only on the understanding that all the places marked as common would continue to remain as common."

Only in the context of the above features, this court held in that case that the conversion is without authority of law. But in the case on hand, the abstract does not show that the place earmarked for "Community Centre" is meant for common use. On the other hand, it is included under the category "Saleable Lands". The purpose mentioned is namely, for the use of "Community Centre". This only means that whoever is the taker from the Housing Board on an agreed price shall use the property only for the purpose of "Community Centre" and not for any other purpose. Under the scheme and the lay-out, it is not provided that the above referred to space must remain as a open space, since from the reservation it is clear that in any event a construction to house a "Community Centre" has to come up. Therefore the argument that, by the intended act, the "lung space" made available to the citizen for good environment surroundings, has no legs to stand. Once that purpose i.e., Community Centre, is found to be not reachable and the power to convert the usage is recognised, then, no illegality at all can be found in the proceedings challenged."

27. In view of the settled proposition laid down in the order of this Court referred to above that kalyana mandapam can be used for community purposes and taking note of the various proceedings of the respondents 1 to 4 in and by which the plot in question was sold to the fifth respondent, particularly the fact that approval was granted by the authorities concerned as early as in January 2002 for the construction of community hall, the petitioner is estopped from having an apprehension at this stage that the plot allotted for community hall may be exploited for commercial purposes if a kalyana mandapam is allowed to be constructed. That apart, prima facie, the petitioner has not made out any case by establishing that there is infringement of right guaranteed to him under Article 300A of the Constitution of India and also there is violation of the provisions of the Tamil Nadu Town and Country Planning Act, 1971, to sustain the writ petition after a lapse of considerable period of time.

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In view of the above findings, I am of the considered view that the writ petition deserves no consideration and is accordingly dismissed without any order as to costs. Consequently, connected M.Ps. are closed.

Cad

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1 The Director of Town & Country Planning
Anna Salai
Chennai - 600 002

2 The Block Development Officer (Village Panchayat)
and Commissioner / Local Planning Authority
Tiruvarur Panchayat Union
Tiruvarur
Tiruvarur District

3 The Special Officer
Tiruvarur Cooperative Housing Society
South Main Street
Tiruvarur

• One cc to Mr. K. Sridhar, Advocate SR 75321
One c cto Mr. a. Jenaseana, Advocate sR 75491
ASM (co)
sg 05/01/08

order in
W.P.No.22115 of 2006
19.12.2007

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